

Stevenson v CBS Broadcasting, Inc.

2011 NY Slip Op 30116(U)

January 19, 2011

Sup Ct, NY County

Docket Number: 110806/05

Judge: Debra A. James

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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: DEBRA A. JAMES
Justice

PART 59

MARY STEVENSON,
Plaintiff,

Index No.: 110806/05

Motion Date: 03/30/10

- v -

Motion Seq. No.: 04

CBS BROADCASTING, INC., CBS SYSTEM, INC.,
VIACOM, INC., CB RICHARD ELLIS, INC.,
TERRIEN TRANSPORTATION, INC., and
TERRIEN TRANSPORTATION, INC., d/b/a,
KING WARD COACH LINES,
Defendants.

Motion Cal. No.: 91

The following papers, numbered 1 to 3 were read on this motion for summary judgment.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits
Answering Affidavits - Exhibits
Replying Affidavits - Exhibits

FILED
JAN 20 2011

PAPERS NUMBERED	
1	_____
2	_____
3	_____

Cross-Motion: Yes No

NEW YORK
COUNTY CLERK'S OFFICE

Upon the foregoing papers,

CBS Broadcasting, Inc. (Broadcasting) and Viacom, Inc. (Viacom) (together, CBS) move for summary judgment dismissing plaintiff's complaint as against them. Plaintiff's complaint asserts liability for negligence against CBS based upon its ownership of the building (the building) located at 51 West 52nd Street, New York. She claims that she fell down a flight of steps outside the building.

Plaintiff asserts that, on November 12, 2002, she went on a

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

[* 2]

bus trip from her home in Springfield, Massachusetts to go to a show at Radio City Music Hall with her two granddaughters and one of their friends. She alleges that they left at 8:00-8:30 A.M. and arrived in New York at about 12:30 P.M. She claims that it was raining that day and that she was sharing an umbrella with one of her granddaughters, walking arm in arm, after they exited the bus. She further asserts that the bus let them out near Radio City Music Hall, between 52nd and 53rd Streets on Sixth Avenue, and her other granddaughter needed to get an umbrella, due to the heavy rain. She states that the sidewalk was very crowded and that her group went towards an umbrella vendor about 30 feet; that they were walking towards the building and were "trying to back up a little to get out of the way ... (of) the crowd."

Plaintiff further claims that, after backing up five steps without looking behind them, she fell on the steps. She asserts that no one bumped them and they did not see either the steps or handrails prior to plaintiff's fall. She avers that, after the fall, she was taken inside the building, and then later to the hospital.

Plaintiff contends that the steps appeared to be on the same level as the sidewalk, and claims that CBS was negligent because the steps were "concealed" and in violation of New York City's Building Code §§ 153 (6) and 154. Plaintiff's expert states that

the five steps where plaintiff fell are four inches each in height, that they are slick and smooth when dry and "treacherous when wet", and that they "appeared to blend into the sidewalk." He also states that the steps violate the Administrative Code of the City of New York (Administrative Code) §§ 375, 376 (id., ¶¶ 20, 21) since the handrails were too far apart. Finally, he also claims that the steps were "concealed," causing plaintiff to fall.

CBS states that it owns the building and that the steps are approximately 100 feet in length, with six-inch-high steps, that the handrails are approximately 30 feet apart, that there have been no changes in configuration since 1964 and that there were no accidents on the steps prior to this incident.

CBS asserts that plaintiff does not know what caused her to fall, that she has no memory of the accident, and only knows what she was told about it by her. It states that, according to plaintiff's granddaughter, plaintiff was not using the stairs, but was stepping back without looking behind her. It also contends that plaintiff's failure to observe the stairs was not due to any defective or dangerous condition, but rather due to heavy rain and because plaintiff was trying to get out of the way of the crowd.

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CBS argues that Administrative Code §§ 375 and 376 are inapplicable to this case and that plaintiff fell due solely to her own conduct.

Plaintiff has not raised Building Code §§ 153 and 154 in her opposing papers. Instead, she argues that CBS violated Administrative Code §§ 375 and 376.

The court holds that Section 375 applies to interior stairs (Maksuti v Best Italian Pizza, 27 AD3d 300 [1st Dept 2006]). Since the steps were outside the building, that section of the Administrative Code is inapplicable to this case. Furthermore, a staircase located outside a building must be a required exit in order for section 376 to apply to mandate handrail requirements (Gaston v New York City Hous. Auth., 258 AD2d 220, 223-224 [1st Dept 1999]). Since the steps did not provide a means of entrance or egress to the building, they were not an exit (id. at 224) and, therefore, section 376 is likewise inapplicable.

Generally, a landowner must act as a reasonably prudent person in maintaining its property in a reasonably safe condition under all the circumstances, including the likelihood of injury, the potential seriousness of injury and the burden of avoiding the risk. Peralta v Henriquez, 100 NY2d 139, 144 (2003). Additionally, a party must be aware of the alleged defective or dangerous condition, either through having created it, actual knowledge of the condition or constructive notice of it through

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the defect's visibility for a sufficient amount of time prior to the accident to enable a defendant to discover and remedy it.

Gordon v American Museum of Natural History, 67 NY2d 836, 837 (1986).

Where a danger is so readily apparent that it cannot reasonably be overlooked it is an open and obvious danger and a warning is superfluous. Westbrook v WR Activities-Cabrera Mkts., 5 AD3d 69, 71 (1st Dept 2004). Generally, whether a condition is open and obvious is a jury question. Id. at 72.

On this motion, plaintiff's claims that the steps were defective because they were "hidden." Plaintiff asserts she has no memory of the accident and does not know what caused her to fall. She has not presented any evidence of actual notice and there is no evidence of prior accidents to afford CBS notice of a purported dangerous condition.

Furthermore, plaintiff on this record is unable to establish that the claimed defect caused the accident. Plaintiff's granddaughter testified that neither she nor the plaintiff looked at the steps prior to the accident but that plaintiff was arm in arm with her and had taken five steps backward out of the way of pedestrians on the crowded sidewalk when she fell. Even if the steps constituted a dangerous or defective condition, plaintiff has not presented evidence connecting this alleged defect to her fall, rather than due to her own misstep. Martinez v. Trustees

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of Columbia University in City of New York, 271 AD2d 223, 224 (1st Dept 2000) ("Plaintiff's own proof establishes that the fall was most likely caused by inattentiveness to where she was walking. There is no direct evidence connecting the [defect] and the reason for the fall."); Plowden v Stevens Partners, LLC, 45 AD3d 659, 660-661 (2nd Dept 2007) ("plaintiff failed to present any evidence connecting the absence of handrails to her fall"); Vichnevskaja v 200 W. 86th Apt. Corp., 23 AD3d 314, 314-315 (1st Dept 2005) ("plaintiff's testimony that she did not know what caused her to fall, and was hurrying and looking not at the steps but forward.").

As plaintiff is unable to establish the causation element of the cause of action for negligence, the motion for summary judgment dismissing the complaint shall be granted.

Accordingly, it is

ORDERED that the motion of CBS Broadcasting, Inc. and Viacom, Inc., for summary judgment is GRANTED, the complaint is DISMISSED as against said defendants, and the Clerk is directed to enter judgment accordingly.

This is the decision and order of the court.

Dated: January 19, 2011

ENTER:

FILED

JAN 20 2011

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~~Debra A. James~~
Judge Debra A. James J.S.C.

FILED

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